

STATE OF MICHIGAN  
COURT OF APPEALS

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LIN ANN CRADIT,

Plaintiff-Appellee,

v

MICHAEL ALVIN McKNIGHT,

Defendant-Appellant.

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UNPUBLISHED

December 16, 2003

No. 242909

Saginaw Circuit Court

LC No. 02-042233-DP

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Defendant appeals as of right orders of filiation and child support. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In a prior action, plaintiff sought and obtained child support from her then-husband, asserting that he was the legal father of her son. In a subsequent divorce action, a judgment was entered indicating that defendant was the biological father of the child, and the ex-husband was not. Plaintiff then filed this paternity action, seeking support from defendant.

Defendant asserts that the trial court erred in denying his motion for summary disposition based on res judicata. Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Baraga County v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

A support order arising from a divorce constitutes an adjudication of paternity, and precludes relitigation of that issue between the same parties. *Hackley v Hackley*, 426 Mich 582, 585; 395 NW2d 906 (1986). This action does not involve the same parties as the prior support action or the divorce, and res judicata is not applicable. Defendant's paternity could not be established in the divorce judgment between plaintiff and her ex-husband. *Pruitt v Pruitt*, 90 Mich App 230; 282 NW2d 785 (1979). The trial court did not err in finding that this action was not barred by res judicata.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White